

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

On April 23, 1997, claimant fell from a ladder while working for the respondent and landed approximately ten feet below. Claimant immediately sought medical treatment at a local hospital's emergency room for a fractured right ankle.

The next day orthopedic surgeon Ely Bartal, M.D., operated on claimant's injured ankle. On claimant's follow-up visit to the doctor on May 5, 1997, claimant complained of low back pain. That complaint is noted in the doctor's records. Claimant also testified he told Dr. Bartal's nurses on April 24, 1997, that he was experiencing back pain. That complaint is not noted in the medical records which were introduced at preliminary hearing. Claimant contends his back complaints are related to his fall.

The Administrative Law Judge had the opportunity to observe claimant testify and to assess his demeanor and credibility. The Administrative Law Judge believed claimant and awarded him benefits despite the fact respondent's witnesses testified claimant did not initially mention back complaints. In this instance the Appeals Board gives some deference to the Administrative Law Judge's determination of claimant's credibility and also finds that it is more probably true than not that claimant injured his back as a result of the April 1997 fall.

Respondent and its insurance carrier contend claimant failed to provide respondent with timely notice of accident as required by K.S.A. 44-520. That statute provides in pertinent part:

"Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary."

George Page, Jr., respondent's owner, had notice of the accident on the day it occurred. The notice was adequate and timely. As the above-quoted statute indicates, the injured worker is required to provide notice of the accident. The statute does not require the worker to identify each injured body part. Theoretically, the investigation following notice of the accident would produce that information.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the

preliminary hearing Order dated June 17, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Terry J. Torline, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director